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No. **1055 49**

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**In the Supreme Court of the United States**

**OCTOBER TERM, 1941**

**GUY T. HELVERING, COMMISSIONER OF INTERNAL  
REVENUE, PETITIONER**

**v.**

**R. DOUGLAS STUART**

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**PETITION FOR A WRIT OF HABEAS CORPUS TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH  
CIRCUIT**

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REVENUE, PETITIONER**

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## **PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

The Solicitor General on behalf of Guy T. Helvering, Commissioner of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Seventh Circuit entered in the above case on December 19, 1941, reversing in part the decision of the United States Board of Tax Appeals.

### **OPINIONS BELOW**

The memorandum opinion of the Board of Tax Appeals (R. 26-37) is unreported. The opinion of the Circuit Court of Appeals (R. 46-57) is not yet officially reported.



**JURISDICTION**

The judgment of the Circuit Court of Appeals was entered on December 19, 1941 (R. 57). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

**QUESTION PRESENTED**

The taxpayer executed four trusts, one for each of his four children, who were minors during the taxable years here involved, naming himself, his wife, and his brother as trustees. The corpus of each trust consisted of shares of stock in a corporation of which the taxpayer was first vice president and the taxpayer's brother was president. Until the beneficiary of each trust reached the age of thirty (twenty-five in the case of one child), so much of the net income was to be distributed to him or applied for his education, maintenance, and support as the trustees deemed advisable, the balance to be accumulated. When the beneficiary of each trust attained the age of thirty (twenty-five in the case of one child), one-half of the corpus was to be paid over to him. The net income from the remaining portion of the trust fund was to be paid to him during the next five years, at which time he was to receive the balance of the corpus. The taxpayer reserved the right to withdraw any part of the corpus upon substitution of other property of equal value. During the life of the taxpayer his wife and brother had

power to alter, change, or amend the trusts in any respect. Was the income from the trusts created by the taxpayer taxable to him under Sections 166 (2), 167 (a), or 22 (a) of the Revenue Act of 1934?

#### STATUTE AND REGULATIONS INVOLVED

The statute and regulations involved are set forth in the Appendix to the Government's petition for certiorari in *Helvering v. John Stuart*, which is being filed herewith.

#### STATEMENT

The facts, taken from the findings of fact by the Board (R. 27) and the stipulation filed by the parties (R. 13), may be summarized as follows:

The taxpayer and his wife, Harriet McClure Stuart, have four children: Robert, born April 26, 1916; Anne, born January 11, 1920; Margaret, born January 3, 1922; and Harriet, born February 3, 1928 (R. 27). On March 25, 1932, the taxpayer executed four trust indentures by which he created trusts for the benefit of each of his four children (R. 27). The provisions of each of the trust indentures were substantially the same (R. 13, 27). The taxpayer, his wife, and his brother, John Stuart, were named as trustees of each trust. The corpus of each trust consisted of 1,500 shares of the common stock of the Quaker Oats Company, of which the taxpayer was first vice president (R. 27). Each indenture provided that until the child desig-



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nated as the beneficiary therein became thirty years of age (twenty-five years of age in the case of one child), the trustees were to pay over to the beneficiary so much of the net income or apply so much of the net income for his education, support, and maintenance "as to them shall seem advisable, and in such manner as to them shall seem best, and free from control of any guardian" (R. 16, 27). The unexpended portion of the net income was to be added to the principal of the trust (R. 16, 27). When the beneficiary reached the age of thirty (twenty-five in the case of one child), one-half of the principal was to be paid over to him. Thereafter the trustees were to pay over to the beneficiary the net income from the remaining portion of the trust fund during the next five years, at which time the balance of the principal was to be paid over to the beneficiary (R. 16, 27). In the event of the death of the beneficiary before receiving all of the principal of the trust, the principal was to be paid to the beneficiary's surviving children, or, if the beneficiary left no surviving children, then the principal was to be paid over to the issue then surviving of the taxpayer, with remainders over in the event of default (R. 16-17, 27). Each trust indenture contained a clause providing that the trustees were not to incur any liability "except such as may be due to . . . actual fraud or willful mismanagement" (R. 18, 28). Each indenture contained a "spendthrift" clause prohibiting anticipation by the beneficiary (R. 17). Articles

**Eighth and Ninth of each indenture provided as follows (R. 28-29):**

**Eighth.** The Donor reserves and shall have the right at any time and from time to time to direct the Trustees to sell the whole of the Trust Fund, or any part thereof, and to reinvest the proceeds in such other property as the Donor shall direct. The Donor further reserves and shall have the right at any time and from time to time to withdraw and take over to himself the whole or any part of the Trust Fund upon first transferring and delivering to the Trustees other property satisfactory to them of a market value at least equal to that of the property so withdrawn.

**Ninth.** During the life of the Donor, the said Harriet McClure Stuart and the said John Stuart, or the survivor of them, shall have full power and authority, by an instrument in writing signed and delivered by them or by the survivor of them to the Trustees, to alter, change or amend this Indenture at any time and from time to time by changing the beneficiary hereunder, or by changing the time when the Trust Fund, or any part thereof, or the income, is to be distributed, or by changing the Trustees, or in any other respect.

During the period from March 25, 1932, to August 2, 1935, no changes were made in the beneficiaries of the four trusts or in the prop-

erty held by the trusts (R. 29). The total net income of the four trusts was \$37,162.91 in 1934 (R. 29). The total net income of the trusts for 1935 was \$39,217.08, of which amount \$25,831.15 was received by the trustees during the period from January 1 to August 2, 1935 (R. 29). The income from each of the trusts is set forth in the following table (R. 29):

Trust for—	1934	1935
Robert.....	\$5,207.01	\$5,556.30
Anne.....	9,206.20	9,757.46
Margaret.....	9,206.01	9,752.17
Harriet.....	5,543.69	9,151.15

None of the income was distributed to any of the beneficiaries in 1934 or 1935, except that in 1934, \$1,391.50 and in 1935, \$1,882.50 of the net income from the trust for Robert was distributed to him (R. 29). At the time of the creation of the four trusts, the taxpayer's net worth was approximately \$3,000,000 and the property which he transferred to the trusts had a value of approximately \$600,000 (R. 30).

On August 2, 1935, Harriet McClure Stuart, taxpayer's wife, and John Stuart, taxpayer's brother, executed an amendment to each of the four trust indentures, canceling paragraph eighth, and changing paragraph ninth to read as follows: "Ninth. This Indenture and all the pro-

visions thereof are irrevocable and not subject to alteration, change or amendment" (R. 29).

Exclusive of the income of the four trusts the taxpayer had net income in 1934 of \$117,153.17, and in 1935 of \$175,794.47 (R. 29). The Commissioner determined that the net income of the four trusts for 1934 and the net income of the four trusts from January 1, 1935, to August 2, 1935, was taxable to the taxpayer and determined a deficiency accordingly. The deficiency determined by the Commissioner included some other adjustments (R. 9)<sup>which</sup> were not contested and are not here in issue. The Board of Tax Appeals sustained the determination of the Commissioner, holding that the income from the trusts was taxable to the taxpayer under Section 166 (2) of the Revenue Act of 1934 (R. 26-37). Before the Circuit Court of Appeals the Government contended that the Board's decision was sustainable under Sections 167 and 22 (a) as well as under Section 166. The court held that so much of the income which was distributed to Robert Stuart during the years 1934 and 1935 was presumably used in discharge of the taxpayer's obligation to support his minor child and was therefore taxable to him. With respect to the remainder of the income the court reversed the Board's decision (R. 57).

**SPECIFICATION OF ERRORS TO BE URGED**

The Circuit Court of Appeals erred:

1. In holding that the income from the trusts was not taxable to the taxpayer under Section 166 of the Revenue Act of 1934.
2. In holding that the income from the trusts was not taxable to the taxpayer under Section 167 of the Revenue Act of 1934.
3. In holding that only so much of the income from the trust for Robert Stuart as was distributed to him was taxable to the taxpayer under Section 22 (a) of the Revenue Act of 1934.

**REASONS FOR GRANTING THE WRIT**

This case is a companion case to *Helvering v. John Stuart*, in which a petition for certiorari is being filed herewith. The reasons advanced in the petition in the *John Stuart* case for the granting of the writ are equally applicable here.

In addition, the decision below is in substantial conflict with *Whiteley v. Commissioner*, 120 F. (2d) 782 (C. C. A. 3d), certiorari denied, October 13, 1941, No. 516, present Term, to the extent that the trust income was available but not used for the discharge of the grantor's obligation to support his minor children.<sup>1</sup> In the *Whiteley*

<sup>1</sup> Cf. *Helvering v. Stokes*, 296 U. S. 551; *Helvering v. Schweitzer*, 296 U. S. 551; *Douglas v. Willcuts*, 296 U. S. 1; *Helvering v. Blumenthal*, 296 U. S. 552; *Helvering v. Cozey*, 297 U. S. 694.



case the court held that the availability of the income for the purpose of discharging an obligation to support was sufficient to render it taxable to the grantor. In the instant case the court below has held to the contrary. It is true that in the *Whiteley* case the use of the income for support of the grantor's child was within the sole control of the grantor, whereas in the instant case that control was shared by the grantor with his wife and brother. But under the Board's decision the grantor's wife and brother were persons amenable to his wishes with respect to the administration of the trusts, and the case is therefore essentially similar to the *Whiteley* case.

#### CONCLUSION

It is respectfully submitted that this petition should be granted.

CHARLES FAHY,  
*Solicitor General.*

MARCH 1942.